

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5615 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI P BAROT

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner

MR VM PANCHOLI, AGP i/b M/S MG DOSHIT & CO for Resp No. 1

M/S PURNANAND & CO for Respondent No. 2

MR JF SHAH for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the judgment dated 6.9.1986 of the Gujarat Civil Services Tribunal in Appeal No. 97 of 1983 and has also prayed for a writ of mandamus to direct respondent Nos. 1 and 2 to promote the petitioner to the post of Divisional Accountant in

Accounts Group I with effect from 7.7.1981 or any other suitable date with all consequential benefits.

2. The petitioner's case is that the petitioner was appointed as a Clerk on 3.1.1958 and was promoted as Deputy Accountant in Accounts Group II on 11.2.1972 and, therefore, the petitioner was senior to respondent Nos. 3, 4, 5 and 6 who joined in the cadre of Clerks, Avalkarkuns and Deputy Accountant in Accounts Group II later on. The petitioner has, therefore, submitted that the petitioner's case ought to have been considered for promotion to Divisional Accountant in Accounts Group I earlier when the cases of respondent Nos. 3 to 6 were considered and they were promoted as Divisional Accountants Group I. The Tribunal rejected the said contention on the ground that although he was promoted to the post of Deputy Accountant on 1.12.1972, in the year 1973 the petitioner was reverted to the post of Senior Clerk by order dated 23.10.1973 pursuant to the petitioner's request on account of certain personal domestic reasons as he wanted a transfer to Ahmedabad. In his request, he had stated that he wanted his transfer as an Accountant to Ahmedabad but in case for any reason he cannot be transferred to Ahmedabad in the said post, he may be reverted to the post of Senior Accounts Clerk and posted in the Accounts Branch of the Ahmedabad District Panchayat by reverting the petitioner for one year. The said application dated 22.8.1971 is referred to in the judgment of the Tribunal. Accordingly, by the aforesaid order dated 23.10.1973, the petitioner was reverted to the post of Senior Accounts Clerk. The petitioner accordingly reported for duty in the post of Senior Accounts Clerk with effect from 1.11.1973. The scale was, therefore, required to be fixed accordingly in the lower scale, but that was not done. Again on 29.6.1979, the petitioner had in writing refused promotion. The said letter is also reproduced in the judgment of the Tribunal. Further on 25.2.1980, the petitioner again refused promotion second time and ultimately on 17.2.1981, the petitioner expressed his willingness to accept the promotion as Deputy Accountant and accordingly the petitioner was promoted and took over charge of the said post on 1.8.1981. The Tribunal has, therefore, given a clear finding of fact that the petitioner was not in the cadre of Deputy Accountants between 1.11.1973 and 31.7.1981 and, therefore, respondent Nos. 3 to 6 who were already promoted as Deputy Accountants in Group II prior to 31.7.1981 had better claim for seniority in the cadre of Deputy Accountants in Accounts Group II and for promotion to the post of Divisional Accountant in Accounts Group I. Even

so, the Tribunal while rejecting the petitioner's appeal directed the District Development Officer to consider the case of the petitioner for promotion in light of the recruitment rules when a future vacancy arises.

3. In light of the aforesaid findings of fact given by the Tribunal, in this petition under Article 226 of the Constitution for challenging the judgment of the Tribunal, no interference with the findings of fact given by the Tribunal is called for.

The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

August 16, 1999 (M.S. Shah, J.)

sundar/-